

CORINNE MAE HOWELL AND HER MINOR CHILDREN
GARY ARNOLD HOWELL, RICHARD DEWAYNE HOWELL,
AND DARCY LYNN HOWELL

v.

UNITED STATES

IBIA 80-30-DE, 80-31-DE

Decided September 9, 1981

80-32-DE, 80-33-DE

Decision on petition for reconsideration in Alaska Native Disenrollment contest following decision ordering appellants disenrolled from the roll of beneficiaries of the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1628 (1976 and Supp. I 1977).

Reconsideration denied.

1. Indian Tribes: Alaskan Groups--Alaska Native Claims Settlement Act: Disenrollment: Metlakatla Natives: Administrative Authority: Estoppel

Exclusion of appellant members of the Metlakatla Community from benefits under provisions of the Alaska Native Claims Settlement Act held not to be precluded by a contrary result reached in a prior Administrative Law Judge's decision in a similar case. The determination by the

agency factfinder in the separate but similar situation is not binding upon the Board of Indian Appeals, which renders final decision for the Department in disenrollment appeals referred on appeal to the Board.

APPEARANCES: Barbara J. Blasco, Esq., and Stephen R. West, Esq., for appellants Corinne Mae Howell, Gary Arnold Howell, Richard Dewayne Howell, and Darcy Lynn Howell; Bruce Schultheis, Esq., Anchorage Solicitor's Office, for appellee.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On June 29, 1981, appellants requested the Board to reconsider its June 11, 1981, decision holding that they should be disenrolled as beneficiaries under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. §§ 1601-1628 (1976 and Supp. I 1977). (9 IBIA 3, 88 I.D. 575 (1981)). Appellants argue that the doctrines of res judicata, stare decisis, and collateral estoppel prevent the Board from reaching a decision contrary to that reached in United States v. Anderson, Docket No. AL 77-57D, decided November 30, 1977. That case allowed disenrollment contestees who had one-fourth or more Native ancestry other than Tsimshian to be enrolled under ANCSA whether or not they were also enrolled in the Metlakatla Community on April 1, 1970. ^{1/} This argument must be rejected for several reasons.

^{1/} The Apr. 1, 1970, date is made determinative by 25 CFR 43h.11.

[1] First, Anderson was decided by an Administrative Law Judge of the Office of Hearings and Appeals. It was not appealed as permitted by 43 CFR 4.1010. The Secretary's final review authority over disenrollment contests is vested in the Interior Board of Indian Appeals, sitting as an Ad Hoc Appeals Board, not in Departmental Administrative Law Judges. 43 CFR 4.1(b)(6) and 4.1010. Therefore, whatever res judicata, stare decisis, or collateral estoppel arguments may be raised against the Department by the contestees in Anderson, those arguments cannot be used to bind the Secretary to an interpretation of law which the Board has determined to be incorrect. ^{2/}

Second, even if the decision in Anderson were held to be prior precedent of equal dignity with a Board ruling, the Board would not be precluded from correcting an erroneous prior interpretation of the statute. See McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974). The Board decision in this case clearly sets forth and rejects the mistake of law upon which Anderson was based. Howell v. United States, 9 IBIA 3, 88 I.D. 575 (1981). Therefore, to the extent that the present decision could be construed as a departure from the prior administrative position, that departure is adequately shown to be neither arbitrary nor capricious. See Squaw

^{2/} Appellants argue that they will be treated differently from the similarly situated contestees in Anderson as a result of this decision. To the extent that disparate treatment results, it is the consequence of an earlier erroneous interpretation of the law. Prior error, however, cannot be raised as a bar to the correction of that error. Furthermore, the Board cannot assume that the prior erroneous determination in the Anderson cases will go uncorrected.

Transit Co. v. United States, 574 F.2d 492 (10th Cir. 1978); FTC v. Crowther, 430 F.2d 510 (D.C. Cir. 1970). ^{3/}

Third, appellants' reliance on Anderson ignores the existence of a subsequent ruling by the Board on this issue. In Alaska Native Disenrollment Appeals of James Edward Scott, Sr. and Robert Charles Scott, 7 IBIA 157, 86 I.D. 333 (1979), the Board upheld the disenrollment under ANCSA of an individual who was an enrolled member of the Metlakatla Community on April 1, 1970. Because that fact alone was found to be dispositive under ANCSA, the Board did not consider the individual's Native ancestry. Similarly, in Henry Sam Littlefield, Jr., 7 IBIA 128, 133, 86 I.D. 217, 219 (1979), the Board's opinion observed "that membership in the Metlakatla Indian Community on April 1, 1970, presents a bar to enrollment under the Alaska Native Claims Settlement Act." ^{4/} Thus, the decision now under consideration conforms with established Board precedent.

Finally, appellants' argument misconstrues the doctrines of stare decisis, res judicata, and collateral estoppel in the appellate process. According to appellants' interpretation of these doctrines, an appellate tribunal could never correct an error made at the hearing level, but

^{3/} Both of these cases acknowledged the agency's right to change its policy, but ordered the agency to explain its departure from prior rulings.

^{4/} The Board went on to find in Littlefield that the appellant was not a member of the community and so was eligible for enrollment under ANCSA.

would be bound to perpetuate the error of the earlier decision. Such reasoning puts form over substance and negates the essence of the appellate process--reviewing and correcting error.

For these reasons, appellants' request for reconsideration is denied.

Franklin D. Arness
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Jerry Muskrat
Administrative Judge